

STATE OF MICHIGAN
COURT OF APPEALS

KHEDER HOMES AT CHARLESTON PARK,
INC.,

UNPUBLISHED
January 2, 2014

Plaintiff/Counter-
Defendant/Appellee,

v

CHARLESTON PARK SINGH, LLC, and
DARSHAN GREWAL,

No. 307207
Oakland Circuit Court
LC No. 2010-110712-CK

Defendants-Appellants,

and

SINGH DEVELOPMENT, LLC, and GURMALE
GREWAL, a/k/a GARY GREWAL,

Defendants,

and

SINGH HOMES CHARLESTON PARK, LLC,

Defendant/Counter-Plaintiff/Third
Party Plaintiff,

and

JOSEPH KHEDER,

Third-Party Defendant.

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

O'CONNELL, J. (*dissenting*).

I respectfully dissent.

In the proceedings below, plaintiff failed to prove that its damages were the direct, natural, and proximate result of defendants' alleged misrepresentations. I would reverse the orders denying defendants' motions for directed verdict and judgment notwithstanding the verdict (JNOV).

As the majority correctly recognizes, plaintiff in this case had the burden of proving that the alleged fraud actually caused the damages that plaintiff sustained. See *Rosenblatt v John F Ivory Storage Co*, 262 Mich 513, 517; 247 NW 733 (1933). Plaintiff could recover only the damages that were the natural and proximate result of the alleged fraud. See *Findlater v Dorland*, 152 Mich 301, 308; 116 NW 410 (1908).

Unfortunately for plaintiff, the overwhelming evidence in this case establishes that the Charleston Park development failed because of a post-2005 collapse in the relevant housing market. Plaintiff failed to establish, other than mere speculation, that any potential buyer rejected this subdivision because of defendants' alleged misrepresentations or the lack of attractive amenities in this development.

Plaintiff contends that it is sufficient to establish that misrepresentations were made and that, as a result of those misrepresentations, plaintiff entered into a contract with defendants. I disagree. Under our current law, plaintiff must establish that the misrepresentations be the real, direct, proximate, and immediate cause of the injury or damage.

37 Am Jur 2d, Fraud and Deceit, § 271, explains the causation issue:

To support an action for fraud, the fraud or misrepresentation must be the proximate cause of the damages upon which the action is based. "Proximate cause" encompasses:

(1) causation in fact, which requires a defendant's misrepresentations to be a substantial factor in determining the course of conduct that results in the plaintiff's loss; and

(2) legal causation, which requires the plaintiff's loss to have been reasonably expected to result from the reliance.

Thus, in order to maintain an action for fraud and deceit, *it is generally necessary that the fraud be the real, direct, proximate, and immediate cause of the injury or damage*. In other words, the fraud and injury or damages must be connected and must bear to each other the representation or statement to be actionable or remediable, there must be a causal connection between it and the damage sustained (not a remote consequence of the fraud), and a showing that the loss complained of is independent of other causes. In other words, there must not be an intervention of other independent causes. [Emphasis added.]

Similarly, 37 Am Jur 2d, Fraud and Deceit, § 272, states:

To establish the causation necessary between the fraud and the loss, *it must appear in an appreciable sense that the damage flowed from the fraud as the*

proximate, and not the remote, cause; the damage must be such as is the natural and probable consequence of the fraud. The damage must also be reasonably certain or such as can be clearly defined and ascertained. The recipient of misleading information must prove that the misrepresentation proximately caused the injury in order to establish a fraud claim; injury is proximately caused by the fraud if it is a natural or probable consequence of the defrauder's misrepresentation or if the defendant ought unreasonably to have foreseen that the injury was a likely consequence of the fraud. The plaintiff must show not just "but for" causation but also that the defendant's misstatements were the reasons that the plaintiff suffered the damages.

There is some authority that to sustain an action in fraud, it is not necessary that the injuries be the immediate result of the fraud and that they may be proximate though only consequential to the fraud. Although the fraud does not cause substantial damage apart from the happening of subsequent events that reasonably may be expected to happen, if these do happen, the defendant is chargeable with the natural consequences of his or her act. Fraudulent representations or misrepresentations need not be the sole cause of loss in order to be actionable; it is sufficient if they are a material inducement or an essential, material, or inducing cause. Thus, the causation element of a misrepresentation claim requires that the misrepresentation be a substantial factor in the plaintiff's actions, such that it tends along with other factors to produce plaintiff's harm; defendant's conduct need not be the sole cause of the injury, and it is enough that the plaintiffs introduce evidence from which reasonable men and women may conclude that it is more probable that the event was caused by the defendant than that it was not. However, the mere recitation of the elements of fraud is insufficient to state a cause of action, and the fraudulent conduct must be related to the resultant damages in order to satisfy the requirement of proximate causation. Also, causation too remote as a matter of law will not support a cause of action or recovery of damages for fraud. When factors other than the defendant's fraud are an intervening direct cause of a plaintiff's injury, that same injury cannot be said to have occurred by reason of the defendant's actions.

The benefit-of-the-bargain rule of damages in fraud cases and the causation analysis are inextricably intertwined. [Emphasis added.]

In the present case, the direct, natural, and proximate cause of plaintiff's damages was the collapse of the relevant housing market. I would reverse and remand for further proceedings consistent with this opinion.

/s/ Peter D. O'Connell